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Cervetto Building Maintenance Co., its successor Joseph Maria Cervetto, d/b/a Cervetto Building Maintenance Co.; Joseph Maria Cervetto and Theater and Amusement Janitors Union Local 9, Service Employees International Union, AFL-CIO; Window Cleaners Union Local 44, Service Employees International Union, AFL-CIO; Service Employees Union Local 87, Service Employees International Union, AFL-CIO; SEIU National Industry Pension Plan, Formerly Building Service Employees Pension Plan; Building Service Health and Welfare Trust Fund and Theater and Amusement Janitors Union Local 9, Service Employees International Union, AFL-CIO; Building Service Health and Welfare Trust Fund

Cervetto Building Maintenance Co., d/b/a Little Giant Window Cleaning Co., Inc.; its successor Joseph Maria Cervetto, d/b/a Cervetto Building Maintenance Co.; Joseph Maria Cervetto and Window Cleaners Union Local 44, Service Employees International Union, AFL-CIO; SEIU National Industry Pension Plan, Formerly Building Service Employees Pension Plan. Cases 20-CA-22296, 20-CA-23061, 20-CA-22355, 20-CA-22451, and 20-CA-22480

September 29, 1995

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

On July 5, 1991, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Respondent Cervetto Building Maintenance Co., Cervetto Building Maintenance Co. d/b/a Little Giant Window Cleaning Co., Inc., and Cervetto Building Maintenance Co., d/b/a Little Giant Building Services, Inc. (collectively Respondent CBM), its officers, agents, successors, and assigns, to make whole the Building Service Employees Pension Trust and the Building Service Health and Welfare Trust for all contributions it had unlawfully failed to make and to make whole the unit employees for any expenses they incurred as a result of the failure to make such benefit payments. On July 28, 1992, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.

Controversies having arisen over whether Joseph Maria Cervetto, d/b/a Cervetto Building Maintenance Co. (Respondent Cervetto d/b/a CBM) is a successor to Respondent CBM and is liable as a successor to Re-

spondent CBM to fulfill the remedial obligations of the Board's enforced Order; over whether Respondent Joseph Maria Cervetto, an individual (Respondent Cervetto) is liable subsequent to the closing of Respondent Cervetto d/b/a CBM to fulfill the remedial obligations of the Board's enforced Order; and over the amounts of backpay due under the Board's enforced Order, the Regional Director for Region 20, on February 28, 1995, issued a compliance specification, motion for determination of personal liability and of liability as successor (compliance specification), alleging the amounts due under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, neither Respondent CBM, Respondent Cervetto d/b/a CBM, nor Respondent Cervetto (collectively Respondents) filed an answer.

By letter dated April 4, 1995, the General Counsel advised Respondent Cervetto that no answer to the compliance specification had been received and that unless an appropriate answer was filed by April 11, 1995, summary judgment would be sought. Respondent Cervetto filed no answer. On May 10, 1995, the compliance specification was served on Jeffry Locke, Bankruptcy Trustee for Respondent Cervetto in the matter of *In Re Joseph Maria Cervetto Case No. 10001 Chapter 13* in the Bankruptcy Court for the Northern District of California. No answer has been received.

On September 5, 1995, the General Counsel filed with the Board a motion to transfer case to the Board and for summary judgment, with exhibits attached. On September 6, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

¹ 303 NLRB No. 99 (not published in bound volumes).

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file any answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.² Accordingly, we conclude, as alleged in the compliance specification, that Respondent Cervetto d/b/a CBM is a successor to Respondent CBM and liable to fulfill the remedial obligations of the Board's Order, as enforced, and that Respondent Cervetto, an individual, is liable, subsequent to the closing of Respondent Cervetto d/b/a CBM, to fulfill the remedial obligations of the Board's Order, as enforced. As requested in the General Counsel's motion, therefore, we will order Respondent Cervetto to pay the amounts set forth in the compliance specification, plus interest accrued on these amounts to the date of payment.

FINDINGS OF FACT

At all material times, and continuing until about November 1, 1990, Respondent CBM, a California corporation with an office and place of business in San Francisco, California, was engaged as a janitorial contractor providing janitorial services and related services. About November 1, 1990, the California Franchise Tax Board suspended Respondent CBM's corporate status. At all material times, Respondent Cervetto, an individual, has been president, director, and shareholder of Respondent CBM.

At all material times from about November 1, 1990, until it ceased doing business about August 1991, Respondent Cervetto d/b/a CBM was owned by Joseph Maria Cervetto, a sole proprietorship, doing business as Cervetto Building Maintenance Co. From about November 1, 1990, until it ceased doing business about August 1991, Respondent Cervetto d/b/a CBM operated the business of Respondent CBM in basically unchanged form and, without interruption or notice, continued to employ as a majority of its employees individuals who previously were employees of Respondent CBM.

Based on the operations described above, Respondent Cervetto d/b/a CBM continued the employing entity, was a successor to Respondent CBM, and was obliged to continue to apply existing terms and condi-

tions of employment. Before engaging in the conduct described above, Respondent Cervetto d/b/a CBM was put on notice of Respondent CBM's potential liability in Board Cases 20-CA-22296, 20-CA-23061, 20-CA-22355, 20-CA-22451, 20-CA-22480, and 20-CA-22500 issuance of the complaints and consolidated complaints in these cases, and the service of those complaints and consolidated complaints on Respondent CBM. Based on this conduct and the operations described above, Respondent Cervetto d/b/a CBM continued the employing entity, had notice of Respondent CBM's unfair labor practices, and was a successor to Respondent CBM obliged to remedy the unfair labor practices.

Based on the conduct and operations described above, Respondent Cervetto d/b/a CBM and Respondent Cervetto, an individual, are jointly and severally liable with Respondent CBM to pay the backpay due under the terms of the Board's Order, as enforced. Respondent CBM, Respondent Cervetto d/b/a CBM, and Respondent Cervetto, an individual, jointly and severally owe the SEIU National Industry Pension Plan, formerly known as the Building Service Employees Pension Plan, \$130,126.15 in unpaid fringe benefit trust fund contributions, interest, liquidated damages, and audit/cost of testing fees, plus additional interest that accrues until date of payment, with the amount of the additional interest to be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

Respondent CBM, Respondent Cervetto d/b/a CBM, and Respondent Cervetto, an individual, jointly and severally owe the Building Service Health and Welfare Trust Fund \$9,611.92 in unpaid fringe benefit trust fund contributions, interest, liquidated damages, and audit/testing fees, plus additional interest that accrues until date of payment, with the amount of the additional interest to be determined in the manner set forth in *Merryweather Optical Co.*, supra.

ORDER

The National Labor Relations Board orders that Joseph Maria Cervetto, an individual, his agents, successors, and assigns, pay the backpay due under the terms of the Board's Order, as enforced, by paying the SEIU National Industry Pension Plan, formerly known as the Building Service Employees Pension Plan, \$130,126.15 in unpaid fringe benefit trust fund contributions, interest, liquidated damages, and audit/cost of testing fees, plus additional interest that accrues until date of payment, and the Building Service Health and Welfare Trust Fund \$9,611.92 in unpaid fringe benefit trust fund contributions, interest, liquidated damages, and

² Although it appears that Respondent Cervetto is in bankruptcy, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

audit/testing fees, plus additional interest that accrues
until date of payment.

Dated, Washington, D.C. September 29, 1995

William B. Gould IV, Chairman

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD